REMARKS

The Office Action dated June 5, 2008, has been received and reviewed. Claims 29-40 were pending in the application, of which claims 29-40 are currently under examination. Claims 1-28 were previously cancelled. Applicant has canceled claims 32, 36 and 40. Applicant has amended claims 29, 33 and 37, and respectfully requests reconsideration of the application as amended herein. Support for these amendments can be found in the as-filed specification (*e.g.*, at page 11, lines 19-25) and in the claims of the as-filed application. No new matter has been added by these amendments.

Applicant respectfully requests entry of the foregoing amendments and reconsideration of the application in light of the amendments above and the remarks below.

Claim Rejections under 35 U.S.C. § 103

Claims 29-40 were rejected as being unpatentable over U.S. Patent No. 5,898,682 to Kanai ("Kanai") in view of U.S. Patent No. 6,567,682 to Moon ("Moon"). Applicant respectfully traverses this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, the Examiner must determine whether there is "an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds "cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367

(Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 29-31, 33-35 and 37-39 are improper because the elements for a *prima facie* case of obviousness are not met. (Claims 32, 36 and 40 have been canceled herein.) Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations.

Independent Claims 29, 33, 37

Regarding independent claims 29, 33 and 37, Applicant has amended independent claims 29, 33 and 37 to include claim limitations not taught or suggested in the cited references. Applicant's amended independent claims 29, 33 and 37, each recite, in part, "***detecting an unbalanced quality of power control signals from a wireless device*** simultaneously ***received at a plurality of base station transceivers involved in a soft handoff***, wherein ***the unbalanced quality is determined based on qualities of power control signals from each of the plurality of base station transceivers involved in the soft handoff***" which is not taught or suggested in the cited references.

The Office Action alleges, in part:

> Regarding claim 29 ... Regarding claim 33 ... Regarding claim 37, ... Kanai discloses [] detecting an ***unbalanced quality of power control signals simultaneously received at a plurality of base station transceivers*** from a wireless device (... which reads on column 2 lines 24-25, column 8 lines 53-65; fig. 3, fig. 5) .... (Office Action, pp. 3, 5 and 7; emphasis added).
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> Regarding claim 32 ... Regarding claim 36 ... Regarding claim 40, Kanai discloses the ***wireless device is in soft handoff*** (which reads on column 1 lines 53-55). (Office Action, pp. 5, 7 and 9; emphasis added).

Applicant respectfully disagrees with the characterization of the teachings of Kanai. Applicant respectfully asserts that neither Kanai nor Moon, either individually or in any proper combination, teach or suggest Applicant's invention as presently claimed in amended independent claims 29, 33 and 37, which each recite, in part, "***detecting an unbalanced quality of power control signals from a wireless device*** simultaneously ***received at a plurality of base station transceivers involved in a soft handoff***, wherein ***the unbalanced quality is determined***

based on qualities of power control signals from each of the plurality of base station transceivers involved in the soft handoff".

Specifically, Applicant claims "***detecting an unbalanced quality of power control signals from a wireless device***" while Kanai teaches *measuring a single* communication signal quality and *comparing* that quality *against a threshold* which does not result in a "detecting" or determining of an unbalanced relationship *between "signals"*. (Kanai, Abstract, col. 12, lines 15-19). Furthermore, Kanai merely teaches measuring an uplink channel quality and not specifically "detecting ... quality of power control signals from a wireless device" as claimed by Applicant. (Kanai, Abstract, col. 12, lines 15-19).

Additionally, Applicant claims "***power control signals from a wireless device*** simultaneously ***received at a plurality of base station transceivers involved in a soft handoff***" while Kanai does not teach "simultaneously" receiving anything that is evaluated, and certainly not "power control signals ... simultaneously received" as claimed by Applicant. Specifically, Kanai teaches to "periodically measure[] the communication quality of the uplink channel of the adjacent base station and specifies the communication quality T" (Kanai, col. 14, lines 54-57), which certainly does not teach Applicant's claimed invention including "***power control signals from a wireless device*** simultaneously ***received at a plurality of base station transceivers involved in a soft handoff***".

Furthermore, Applicant claims "***the unbalanced quality is determined based on qualities of power control signals from each of the plurality of base station transceivers involved in the soft handoff***" while Kanai does not teach determining a balanced or unbalanced relationship based on qualities between a plurality of base stations. As stated, Kanai teaches comparing measurements of each base station against a threshold and not against each other. Regarding handoff, Applicant claims specific "detecting," "increasing" and "decreasing" that occurs ***during*** soft handoff, specifically, "at a plurality of base station transceivers involved in a soft handoff". Therefore, a plurality of base stations involved in a soft handoff is a precondition to Applicant's claimed "detecting," "increasing" and "decreasing." In contrast, Kanai teaches that soft handoff *benefits* from Kanai's altering of "hand-off parameters" but Kanai does teach that any specific "detecting," "increasing" and "decreasing" occurs among the "plurality of base station

transceivers involved in a soft handoff" as claimed by Applicant. Specifically, Kanai teaches "the hand-off parameters T-DROP and T-ADD are decreased for the communicating mobile station when the uplink channel is deteriorated [] [w]ith [Kanai's] structure, the soft hand-off area is expanded. (Kanai, col. 16, lines 8-12).

Furthermore, any "balancing" taught in Kanai is between a single base station's uplink and downlink channels. Specifically, Kanai teaches "the communication quality of the uplink channel is improved to keep the balance in communication quality between the uplink and the downlink channels." (Kanai, col. 16, lines 14-16).

Regarding Applicant's other claim elements, for example, "increasing a target signal-to-noise ratio (SNR) of a pilot channel carrying at least one of the power control signals ...", such elements occur in response to Applicant's "detecting" step which is not taught or suggested in the cited references. Accordingly, Applicant's subsequent claim elements, therefore, could not be taught or suggested by the cited references.

Regarding the citation of Moon, Moon also fails to teach or suggest any "detecting" or determination of qualities among the plurality of tranceivers involved in a soft handoff.

Therefore, since neither Kanai nor Moon teach or suggest, for example, "***detecting an unbalanced quality of power control signals from a wireless device*** simultaneously ***received at a plurality of base station transceivers involved in a soft handoff***, wherein ***the unbalanced quality is determined based on qualities of power control signals from each of the plurality of base station transceivers involved in the soft handoff***" as claimed by Applicant, these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. §103, Applicant's invention as presently claimed in amended independent claims 29, 33 and 37. Accordingly, Applicant respectfully requests the rejection of independent claims 29, 33 and 37 be withdrawn.

Dependent Claims 30, 31, 34, 35, 38 and 39

The nonobviousness of independent claim 29 precludes a rejection of claims 30 and 31 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see*

also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 29 and claims 30 and 31 which depend therefrom.

The nonobviousness of independent claim 33 precludes a rejection of claims 34 and 35 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 33 and claims 34 and 35 which depend therefrom.

The nonobviousness of independent claim 37 precludes a rejection of claims 38 and 39 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See* In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 37 and claims 38 and 39 which depend therefrom.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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